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In re Application of
YOSHIMURA, Takashi et al.
Application No.: 10/523,120
PCT No.: PCT/JP04/02756
Int. Filing Date: 04 March 2004
Priority Date: 17 March 2003
Attorney Docket No.: CR00561P
For: STATION

DECISION

This application is before the Office of PCT Legal Administration for matters arising under 35 U.S.C. 371.

BACKGROUND

On 04 March 2004, applicants filed international application PCT/JP04/02756, claiming a priority date of 17 March 2003. A copy of the international application was transmitted to the Office by the International Bureau on 30 September 2004. The deadline for payment of the basic national fee was 17 September 2005.

On 24 January 2005, applicants submitted a transmittal letter for entry into the national phase in the United States, accompanied by a credit card form for payment of the basic national fee.

On 20 June 2005, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to pay the basic national fee by thirty months. It further indicated that the credit card had been declined.

On 24 June 2005, applicants submitted petition to withdraw the holding of abandonment, including a credit card payment form by facsimile.

On 28 July 2005, the Office mailed Decision On Petition Under 37 CFR 1.181 withdrawing the holding of abandonment as the deadline for payment of the basic national fee had not yet passed and indicating that the basic national fee cannot be paid via facsimile. The fees charged from the 24 June 2005 credit card form were refunded.

On 03 May 2006, applicants filed Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b), accompanied by a statement in support of the petition.

On 10 July 2006, the Office mailed Decision, dismissing applicants' petition without prejudice for failure to satisfy the reply and statement requirements of 37 CFR 1.137(b).

On 28 August 2006, applicants filed a renewed petition under 37 CFR 1.137(b).

On 18 September 2006, the Office mailed Decision, granting applicants' petition under 37 CFR 1.181 and dismissing applicants' petition under 37 CFR 1.137(b) as moot.

DISCUSSION

The Decisions mailed 10 July 2006 and 18 September 2006 are vacated.

Applicants' 24 January 2005 submission for entry into the national phase included a credit card form for payment of the basic national fee. The fees were processed, but credit card was declined. As such, the indication that the fees were paid was backed out of the system. Further, applicants' indication that additional fees could be charged to the credit card was doubly unhelpful. First, the credit card was declined. Second, the Office is only allowed to process credit card authorizations for a specific amount. A blanket authorization is not permitted.

Applicants' 24 June 2005 submission was not treated as a petition to revive, as applicants indicate in their 03 May 2006 petition, but as a petition to withdraw the holding of abandonment. The holding was improper, as the time period for payment of the basic national fee had not yet run. In that decision, applicants were specifically advised that the basic national fee had **NOT** been paid, as the credit card form for payment of the basic national fee had been faxed to the Office. Under 37 CFR 1.8(a)(2)(i)(F), the basic national fee cannot be supplied by facsimile. The fees charged based on the faxed credit card form were refunded.

Applicants claim they were simply resubmitting what was earlier provided to the Office. However, applicants state in their facsimile that it is a "new" credit card authorization and as earlier stated, the original authorization was declined. The Office does not reprocess a credit card form once the credit card has been declined. If there is an error in the processing of the initial credit card authorization, a showing that it should not have been declined can be furnished.

On 03 May 2006, applicants filed a petition to revive under 37 CFR 1.137(b). It included the PTO form including the required statement and was accompanied by the payment of the required fees.

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) the required reply, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). Pursuant to 37 CFR 1.137(b)(3), additional information may be required where there is a question whether the delay was unintentional.

Items (1), (2), (3) and (4) have been satisfied. Applicants have made the necessary statement that the entire delay was unintentional. Applicants paid the petition fee and basic national fee. A terminal disclaimer is not required as the application was filed on or after 08 June 1995.

Further, the declaration submitted 24 January 2005 lists the third named inventor as "Syozo Tamaki," but he is listed as "Shozo Tamaki" on the international application. The Office does not have a record of the recording of a change under PCT Rule 92*bis*. If this discrepancy is the result of a

typographical or transliteration error, it can be corrected by a statement under MPEP 201.03 stating either that it was a typographical or a transliteration error and specifying the correct name.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.137(b) is **GRANTED**.

The Decisions mailed 10 July 2006 and 18 September 2006 are **VACATED**.

A statement under MPEP 201.03 or a declaration in compliance with 37 CFR 1.497(a)-(b) is required within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available. Failure to timely reply will result in the abandonment of this application.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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